St. John's Law Review

Volume 12
Number 1 *Volume 12, November 1937, Number 1*

Article 20

May 2014

Motor Vehicles--Negligence--Proximate Cause--Guest Rule (Anderson v. Burkardt, 275 N.Y. 281 (1937))

St. John's Law Review

when the person liable was "of sufficient ability". Since the statute produces a radical change in the common law doctrine of support, it must be strictly construed.[8]

The defendant's contention that the Act [9] is unconstitutional was lightly dismissed by the court on the ground that the general question has been too well settled in this jurisdiction to be argued at this late date. It has been repeatedly held that although marriage is called a civil contract [10] and though it possesses many contractual characteristics, it is not a contract within the meaning of that clause of the Federal Constitution which prohibits a state from passing laws impairing the obligations of contracts.[11] Instead it has been viewed [12] as a social institution avidly protected and regulated by the state.

M. M. B.

MOTOR VEHICLES—NEGLIGENCE—PROXIMATE CAUSE—GUEST RULE.—This is an action to recover for personal injuries alleged to have been sustained by the plaintiffs, husband and wife, who were passengers in an automobile operated by their son, which, while turning to the left into a side street, was struck by the car of the defendant, approaching from the opposite direction. The trial judge, in accordance with the request of plaintiffs' counsel, charged the jury, that even though the negligence of the driver of the automobile in which the plaintiffs were riding contributed to the injury, the plaintiffs may still recover if the jury finds the negligence of the defendant was the direct and proximate cause of the injuries sustained by plaintiffs. Trial term held for defendant, Appellate Division affirmed. On appeal, *held,* judgment for defendant affirmed. *Anderson* v. *Burkardt,* 275 N. Y. 281, 9 N. E. (2d) 929 (1937).

The charge as to contributory negligence taken as a whole in connection with the evidence to which it was to apply was sufficient.[1] It is a question of fact and not of law as to whether the defendant's negligence was the proximate cause of the injury to the plaintiff.[2] Proximate cause is any cause which in natural and continuous sequence, unbroken by any efficient intervening cause, produces the

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[8] OP. ATT'Y GEN. (1934) 51 St. Dept. 258.
[9] N. Y. PUBLIC WELFARE LAW §§ 125, 128.
[10] N. Y. DOMESTIC RELATION LAW § 10; O'Gara v. Eisenlohr, 38 N. Y. 296 (1868) ("Thereby distinguishing it from a religious sacrament"); Wade v. Kalbfleisch, 58 N. Y. 282 (1874).
[11] Maynard v. Hill, 125 U. S. 190, 8 Sup. Ct. 723 (1888); White v. White, 5 Barb. 476 (1848).
[12] Wade v. Kalbfleisch, 58 N. Y. 282 (1874).

[1] Palsgraf v. Long Island R. R., 248 N. Y. 339, 162 N. E. 99 (1928).
[2] Hutchins v. Emery, 134 Me. 205, 183 Atl. 754 (1936).

result complained of and without which the result would not have occurred.[3]

As a matter of law, the defendant had the right of way[4] for "Every driver of a vehicle approaching an intersection shall grant the right of way at such intersection to any vehicle approaching from his right".[5] Irrespective of traffic and police regulations, a driver of a vehicle turning across traffic must use care commensurate with the situation and look out for approaching cars, but he is not obliged to wait until all in sight have passed. Others have the duty of exercising like reasonable care so as not to collide with the turning car.[6] However, one is not bound to use the highest degree of care.[7]

According to the *Guest Rule,* a passenger may recover for injuries received in a collision between two automobiles even though both drivers were at fault.[8] However, to allow recovery against the defendant, the negligence of the defendant must be the direct and proximate cause of the injury.[9] In the instant case, had the jury found that the negligence of the defendant was a proximate cause of the plaintiff's injuries, the latter would not have been denied a recovery even if both drivers were at fault.

R. D.

NEGLIGENCE—BAILMENT—SECTION 59 OF THE MOTOR VEHICLE LAW CONSTRUED.—The Forbes Motor Agency Inc., an automobile selling agency, delivered one of its cars to the defendant Brown and Kleinhenz Inc., for the purpose of effecting a sale. The Forbes Agency vested control of the car in the defendant without limitation of authority and also knew that dealers in general, and the Brown

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[3] 45 C. J. 898; Laidlaw v. Sage, 158 N. Y. 73, 56 N. E. 679 (1899).

[4] Robinson v. Insurance Co. of North America, 198 N. Y. 523, 91 N. E. 373 (1910); Thomas v. Union Ry., 18 App. Div. 185, 45 N. Y. Supp. 920 (2d Dept. 1897); Hurley v. Olcott, 134 App. Div. 631, 119 N. Y. Supp. 430 (2d Dept. 1909); Bresslin v. Star Co., 166 App. Div. 89, 151 N. Y. Supp. 660 (2d Dept. 1915); Zvonik v. Interurban St. Ry., 88 N. Y. Supp. 399 (1904).

[5] VEHICLE AND TRAFFIC LAW § 82, subd. 4 (Cons. Laws c. 71); Traffic Regulations promulgated by the Police Dept. art. 2, § 6.

[6] Farr v. Wright, 248 App. Div. 48, 289 N. Y. Supp. 399 (3d Dept. 1936).

[7] Zvonik v. Interurban St. Ry., 88 N. Y. Supp. 399 (1904).

[8] Michelson v. Stuhlman, 272 N. Y. 163, 5 N. E. (2d) 185 (1936); Prindle v. Rockland Transit Corp., 271 N. Y. 580, 3 N. E. (2d) 194 (1936); Burd v. Bleischer, 208 App. Div. 499, 203 N. Y. Supp. 754 (4th Dept. 1924).

[9] Palsgraf v. Long Island R. R., 248 N. Y. 339, 162 N. E. 99 (1928), no recovery was allowed against a defendant railroad whose guard, in pushing passengers into a train, caused a package containing fireworks to fall from the arms of one of the passengers; they exploded upon striking the ground, and the concussion dislodged a pair of scales some distance down the platform; the plaintiff, standing near the scales, was struck by them.